IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 28320 of 2006(U)

PETITIONER:

K.SATHYADEVAN,
EXECUTIVE ENGINEER (UNDER SUSPENSION),
P.H.DIVISION, KERALA WATER AUTHORITY,
KOLLAM.

BY ADV. SRI.KRB.KAIMAL
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVT. OF KERALA,
WATER RESOURCES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM.

3. THE MANAGING DIRECTOR,
KERALA WATER AUTHORITY, JALABHAVAN,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.KRISHNA KUMAR, SC, KWA
BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J

W.P.(C)NO. 28320 of 2006

Dated this the 10th day of January, 2007

JUDGMENT

The petitioner is borne on the cadre of Executive Engineer in the service of the Kerala Water Authority. The third respondent passed Ext.P1 order dated 10.10.2006 placing the petitioner under suspension while he was working in the Public Health Division, Kollam. The ground for suspension, as discernible from Ext.P1, is that the Director, Vigilance and Anti Corruption Bureau has registered case No.VC 1/04/CRE on allegations of corruption. Ext.P1 refers to two Govt. letters and it in unmistakable terms says that the petitioner has been placed under suspension as directed by the Government. The respondents 1 and 2 are the State of Kerala and the Director VACB respectively.

2. The petitioner understands that the vigilance case referred to above is concerning the purchase of 4 chlorinators in the year 2000 while he was the Executive Engineer, PH Division, Kochi. The circumstances under which the chlorinators were purchased, according to the petitioner, are the following:

Chlorinator is comparatively a costly instrument to chlorinate

potable water to maintain the prescribed level of residual chlorine at Pump Houses and Booster Stations so as to disinfect water. The Water Authority has got one Pumping Station at Thammanam and another at Peumanoor under the Executive Engineer, PH Division, Kochi. There are Booster Stations at Thoppumpady and Karuvelippady within the jurisdiction of the very same Executive Engineer. Water supply to West Kochi is from the above Booster Stations. The main reservoir is at Thoppumpady. The prescribed level of residual chlorine at the end point shall be 0.2 p.p.m. which is to be periodically collected from delivery points and tested to find out the level of residual chlorine. It is found on analysis that the chlorine level is low, chlorine has to be added at the point of delivery from the Pump House. This activity is done by employing the machinery called "Chlorinators". The Assistant Executive Engineer, Water Works Sub Division, Kochi in his letter dated 1.6.2000 addressed to the Executive Engineer, PH Division, Kochi pointed out the urgency of installing one Chlorinator each at Thammanam and Perumanoor Pump Houses in order to ensure the prescribed level of residual chlorine in the water supplied from those Pump Houses. The petitioner who was the Executive Engineer examined the matter and found that the urgency is only for two chlorinators, one each to be installed at Thammanam and Perumanoor. According to the petitioner, the failure to maintain the

prescribed level of residual chlorine at Thammanam and Peurmannoor was due to the failure of the three chlorinators purchased and installed at those Stations in the year 1996 under orders of purchase by the Superintending Engineer. The suppliers did not respond to repeated calls from the Assistant Executive Engineer/Assistant Engineer concerned, for repairs and rectification of the above Chlorinators. It was in the above circumstances that installation of new Chlorinators became essential at Thammanam and Perumanoor. Based on the report received from the Assistant Executive Engineer, the petitioner made a proposal to purchase two Chlorinators. He accorded administrative sanction within his power and submitted draft tender to the Managing Director for approval and publication in newspapers inviting tenders. The third respondent approved the draft publication. In response to the paper notification, tenders were received. The tender submitted by M/s Electromech Engineers was the lowest. Hence, it was accepted and purchase orders were issued. Two Chlorinators were supplied to the Assistant Executive Engineer on 23.8.2000 and they were installed during the period 23.8.2000 to 25.8.2000 at Thammanam and Perumanoor. The total cost of purchase and installation of two Chlorinators was Rs.8 lakhs which was within the financial powers of Executive Engineers.

3. In the meantime, news papers reported spreading of Typhoid in

Kochi area, particularly, in West Kochi. The Chief Engineer, as per letter dated 4.8.2000, directed to take precautionary measures and for superchlorinating the water supply through the distribution system of the Water Authority in Kochi area. The District Collector, Ernakulam convened a conference of Officers of the Water Authority on 4.8.2000 to chalk out precautionary measures to check spreading of Typhoid. On the basis of the discussions and deliberations at the conference, the Superintending Engineer instructed the Executive Engineer to carry out the directions therein including the superchlorination of water. In the above background the petitioner took a decision to make available stand by chlorinators in order to ensure that water was superchlorinated as and when required. He made necessary arrangements to procure two stand by chlorinators. It is the contention of the petitioner that inviting fresh tenders and related procedure was time consuming and as there was only short interval between the issuance of tender and the purchase of chlorinators made earlier, he placed orders with the same firm for supply and installation of chlorinators, at Thammanam and Perumanoor. This was done on 19.9.2000. Accordingly, the two chlorinators were supplied and installed. The total cost of the chlorinators with installation charges comes to Rs.8 lakhs which is the very same rate for the two units purchased in August 2000. The petitioner asserts that the expenditure was within the financial

powers of the Executive Engineer. However, since separate tenders were not invited for the above purchase, he submitted a detailed report to the Superintending Engineer requesting to ratify his action. However, before getting an order from the Superintending Engineer, the petitioner was transferred to Kottayam on 1.2.2001.

4. On 12.12.2000, a meeting was convened by the Mayor of Kochi to take urgent steps to ensure the prescribed level of chlorine and to disinfect the water supplied in West Kochi area. The petitioner had issued order dated 14.12.2000 directing the Assistant Executive Engineer to shift the stand by chlorinators from Thammanam and Perumannoor and install them at the Booster Stations at Thoppumpady and Karuvelipady.

5. It would appear that somebody preferred complaints to the Water Authority as also the Hon'ble Chief Minister alleging that the petitioner had caused loss to the Water Authority by purchasing chlorinators for PH Division, Kochi which was not necessary. Thereupon the Finance Inspection Wing of the Government conducted an enquiry and submitted a report to the Government. Ext.P10 report submitted by the Finance inspection Wing does not refer to any irregularity in the matter of purchase of Chlorinators. The report, however, shows that the Chlorinators were actually needed for replacing the Chlorinators which were not working. It is averred in the writ petition that the Chlorinators

purchased and installed in the year 1996 & 1997 at Thoppumpady and Perumanoor, long before the petitioner had joined duty as Executive Engineer at Kochi, had become completely out of order and that was the reason for the petitioner to take action to replace the same by installing new chlorinators.

6. Complaints were made before the Vigilance Wing of the Water Authority also. Those complaints were got enquired into by the authority itself. The petitioner was interrogated by the Deputy Superintendent of Police, Vigilance. He was under the impression that the vigilance had found truth and merit in the statements given by him in the year 2000 and 2001. For quite sometime, nothing transpired. While so, after a lapse of more than 5 years, Ext.P1 order has been passed placing him under suspension. The petitioner states that there is no justification for placing him under suspension and that the concerned authorities have been misled by incomplete and incorrect reports filed by the investigating officers.

7. The main legal contention urged by the petitioner against Ext.P1 is that it is an order passed by the third respondent as dictated by the first respondent, that there is total non-application of mind by the third respondent and that orders passed mechanically placing the officers under suspension cannot stand legal scrutiny.

8. A detailed counter affidavit has been filed on behalf of the first respondent. According to the first respondent, the information gathered by the vigilance, prima facie, indicates that the chlorinators are not costly instruments, as wrongly stated by the petitioner and if proper advertisement and negotiations had been done, it was not difficult for the petitioner to find out proper persons for the supply of the chlorinators atleast at half the rate of purchase done by the petitioner. It is contended that there was no direction to purchase two more stand by chlorinators at Thammanam and Perumanoor though it is admitted that urgent steps were directed to be taken in order to contain the spread of Typhoid in West Kochi. It is alleged that the petitioner purchased the chlorinators from the contracting firm for Rs.8 lakhs in order to give pecuniary advantage to the firm.

9. In the reply affidavit filed by the petitioner, it is contended that the averment contained in the counter affidavit, that the chlorinators are not costly items of machinery has been made out of sheer ignorance and that there are indications to show that the investigating officers misdirected themselves and have made the report on surmises and assumptions. On behalf of the respondent, it is contended that under Section 55 of the Kerala Water and Sewerage Act, the Government have got the power to issue appropriate directions to the Water Authority, and

therefore, the contention that Ext.P1 is vitiated by the interference of an extraneous authority is unsustainable.

10. Though I have referred to the facts and circumstances as averred by the petitioner on the one hand and the allegations made by the respondents 1 and 2 on the other, I do not propose to examine the correctness of those disputed facts. I feel that any such discussion or appreciation of the factual situation to find out its truth, at this stage, will prejudice the parties. It is evident that the matter is pending investigation and it would be premature to express any opinion about the culpability or otherwise of the petitioner or any other person against whom a vigilance case has been registered and investigation is being conducted. I, therefore, propose to examine the other contention which essentially has a legal favour.

11. Section 55 of the Water Supply and Sewerages Act reads as follows:

> (1) In the discharge of its functions, the Authority shall be guided by such directions on questions of policy as may be given to it by the Government.

12. Interpreting an identical provision contained in the Electricity Supply Act, a Full Bench of this Court in **M.Mani v Kerala State Electricity Board rep.by its Secretary Trivandrum and others**

(AIR 1968 Kerala 76) ruled that only those questions which relate to the essential functions would come within the purview of the expression `such directions'. Section 78A of the Electricity Supply Act is in parimateria and the Full Bench, after elaborately considering the object of the aforesaid provision and the intention of the legislature, drew a distinction between the functions which are essential and functions which are incidental. The word "functions" occurring in Sec.78A, according to the Full Bench, means essential and primary functions and not incidental functions necessary to carry out the essential functions. The question before the Full Bench was whether in the matter of fixing the retirement age of the employees of the Board, the Government had the authority to issue directions to the Electricity Board invoking Section 78A of the Kerala Supply Act and whether the Electricity Board was bound by such directions. The question was answered in the negative. It is therefore clear that the Government does not have the authority to issue directions to the Kerala Water Authority to suspend any of the employees of the authority invoking Section 55 of the Water Supply and Sewerages Act. Matters relating to discipline including those related to the suspension of employees do not come within the purview of essential or primary functions. The main function of the Water Authority is to maintain water supply and make such decisions as are necessary in relation to water

management. Suspension of the employees invoking the disciplinary power of the authority is an incidental function. That being the law, the direction of the Government to place the petitioner under suspension is one by an extraneous authority. It follows that the third respondent ought not to have mechanically implemented that direction. The Water Authority ought to have considered the necessity, if any, to suspend the petitioner independently and with proper application of mind.

13. Water Authority has adopted the disciplinary rules relating to the Government servants, namely, Kerala Civil Services (Classification, Control and Appeal) Rules 1960. **Rule 10** of the aforesaid rules specifically says that "orders of suspension will be passed if the appropriate authority considers that in the then prevailing circumstances, it is necessary, in public interest, that the Government employee should be suspended from service." In this case, the third respondent has passed Ext.P1 without bestowing any such consideration. What is contemplated is independent consideration with due application of mind. Issuing an order of suspension without proper application of mind but mechanically under the dictates of an extraneous authority is not proper exercise of power. Therefore, the learned Senior Advocate is well founded in his submission that Ext.P1 suffers from serious legal infirmities and is liable to be interfered with by this Court.

14. For the above reasons Ext.P1 is set aside. The third respondent will be free to consider the question as to whether the petitioner should be placed under suspension, in the facts and circumstances. Without prejudice to that freedom of the third respondent, this writ petition is allowed.

K.K.DENESAN, JUDGE

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